



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 6, 1998

Ms. Joni M. Vollman  
Assistant General Counsel  
Office of the Harris County District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR98-1134

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115289.

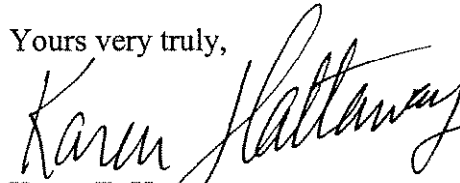
The Office of the Harris County District Attorney (the "district attorney") received a request for all records contained in the district attorney's prosecution pertaining to the conviction of Juan Jose Lopez. You state that the district attorney has released some responsive information to the requestor. You seek to withhold certain other documents pursuant to sections 552.101 and 552.108(a)(3) of the Government Code.

You first contend that the documents you submitted to this office as Exhibit A constitute "work product" that is excepted from public disclosure pursuant to section 552.108(a)(3). Section 552.108(a)(3) provides that information is excepted from public disclosure under the Open Records Act if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) if it is information that reflects the mental impressions or legal reasoning of an attorney representing the state. Exhibit A consists documents such as the handwritten and typed notes of prosecutors and their investigators, DIMS report, the cover folders of the prosecutor's files, an "Offense Report" prepared by the district attorney for the Pardons and Parole Board, and miscellaneous inter- and intra-office memoranda. After reviewing the contents of Exhibit A, we agree that these documents may be withheld pursuant to section 552.108(a)(3), with one exception. You have not explained, nor is it apparent to this office, how the telephone message slips contained in the file constitute "work product" under section 552.108(a)(3): these records presumably were not created by an attorney and do not reflect "the mental impressions or legal reasoning of an attorney representing the state." The message slips must be released.

Exhibit B consists of criminal history record information. We agree that the district attorney must withhold pursuant to statutory law all criminal history information obtained from the TCIC and NCIC. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/ch

Ref.: ID# 115289

Enclosures: Submitted documents

cc: Mr. Michael P. Tenney  
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Buffalo, New York 14202  
(w/o enclosures)